

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Scholz Design, Inc.
3131 Executive Parkway
Toledo, Ohio 43606,

Plaintiff,

vs.

Kevin Maher
28 Zachary Taylor
Stony Point, New York 19080

And

Blanchard Gate, LLC
20 Squadron Blvd., Suite 270
New City, New York 10956

And

MBC Contractors, Inc.
c/o Patrick J. Magee
27 Old Gate Hill Avenue
Stony Point, New York 10980

And

Eric Knute Osborn
7 Joyce Plaza
Stony Point, New York 10980

Defendants.

Plaintiff Scholz Design, Inc. ("Scholz") complains against Defendants Kevin Maher, Blanchard Gate, LLC, MBC Contractors, Inc., and Eric Knute Osborn (collectively "Defendants") as follows:

THE PARTIES

1. Scholz is a Delaware corporation with its principal place of business in Toledo, Ohio.
2. Defendant Kevin Maher is a New York resident.

Case No. _____

07 CIV 11045

COMPLAINT

Plaintiff Demands a Jury Trial

JUDGE CONNER

FILED
U.S. DISTRICT COURT
2007 DEC - 5 PM 4:42
S.D. OF N.Y. W.P.

3. Defendant Blanchard Gate, LLC is a New York limited liability company and is the owner of the home located at 8 Sergeant Schwartz Court, Stony Point, New York (the "House").

4. Defendant MBC Contractors, Inc. is a New York corporation and is the builder of the House.

5. Defendant Eric Knute Osborn is a New York resident and is the architect who prepared the architectural drawings for the House.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over each Defendant.

7. This Court has subject matter jurisdiction over this civil action for copyright infringement pursuant to 28 U.S.C. § 1331 and § 1338(a).

8. Venue is proper pursuant to 28 U.S.C. § 1391 and § 1400.

BACKGROUND

9. Scholz is engaged in the research, development, creation and sale of architectural home designs and drawings. Scholz has developed a network of licensed or registered builders for Scholz designs. Scholz's home designs are sold internationally and in interstate commerce.

10. Scholz has authored architectural designs and drawings entitled "The Kimbleton A 111" (the "Kimbleton Design"). A true and accurate copy of the abridged version of the Kimbleton Design is attached as **Exhibit A**.

11. The Kimbleton Design is an original work of authorship and constitutes copyrightable subject matter under the copyright laws of the United States (17 U.S.C.A. §101 *et seq.*). Scholz is the author of the Kimbleton Design and the current claimant in the copyright of the Kimbleton Design.

12. Scholz has complied in all respects with the copyright laws of the United States and has secured the exclusive rights and privileges in and to the Kimbleton Design. Scholz has applied

for and received from the Register of Copyrights the appropriate Certificates of Copyright Registration for the Kimbleton Design. True and accurate copies of the Certificates of Copyright Registration for the Kimbleton Design are attached as **Exhibit B**.

13. Commencing on the date of first publication, and consistently thereafter, the Kimbleton Design has been published by Scholz in conformity with the copyright laws of the United States.

14. Without Scholz's prior knowledge or permission and after Scholz obtained the Certificates of Copyright Registration for the Kimbleton Design, Defendants prepared, or induced, caused, or materially contributed to the preparation of, certain architectural drawings for the House by copying the Kimbleton Design. Specifically, Defendants have used the drawings and otherwise induced, caused, or directed the wrongfully copied Kimbleton Design to be used or exploited in the construction of the House. True and accurate copies of photographs of the House are attached as **Exhibit C**.

15. Upon information and belief, Defendants participated in the infringing activities, including but not limited to the copying of the Kimbleton Design, the preparation of the architectural drawings for the House, and the construction of the House.

16. Defendants' actions violate Scholz's exclusive copyrights in the Kimbleton Design and those actions constitute an infringement of Scholz's copyrights under 17 U.S.C.A. § 106.

17. Upon information and belief, Defendants' copyright infringement was knowing, willful and intentional.

18. Defendants' actions have caused, and will continue to cause, irreparable damage to Scholz for which there exists no adequate remedy at law.

19. During the pendency of this action, and permanently thereafter, Defendants should be enjoined and restrained from copying, preparing derivative works based upon, or otherwise infringing upon, directly or indirectly, Scholz's copyright in the Kimbleton Design.

20. Scholz is entitled to recover all damages suffered as a result of Defendants' wrongful acts, including but not limited to profits obtained by Defendants as a result of their wrongful acts and the loss of profits sustained by Scholz. In the alternative, Scholz is entitled to recover statutory damages in an amount to be determined by the Court. Scholz is also entitled to recover all reasonable attorney's fees, court costs and interest on said damages from the date of Defendants' infringement.

WHEREFORE, Plaintiff Scholz Design, Inc. demands judgment as follows:

A. An order from this Court preliminarily and permanently enjoining and restraining Defendants and their respective agents, along with those in active participation with Defendants, from copying, preparing derivative works based upon, or otherwise infringing upon, directly or indirectly, Scholz's copyright in the Kimbleton Design in accordance with 17 U.S.C.A. §502;

B. A monetary judgment against Defendants, jointly and severally, for Scholz's damages and the profits derived by Defendants from their unauthorized use of the Kimbleton Design and infringement upon Scholz's copyrights in that design; or, in the alternative, statutory damages in an amount to be determined by the Court based upon Defendants' intentional, willful and deliberate copyright infringement in accordance with 17 U.S.C.A. §504;

C. An award of all reasonable attorney's fees and costs incurred by Scholz in pursuit of its copyright infringement claims, along with interest and all damages from the date of Defendants' infringements in accordance with 17 U.S.C.A. §505; and

D. All other legal and equitable relief as the Court deems just and appropriate.

Respectfully submitted,

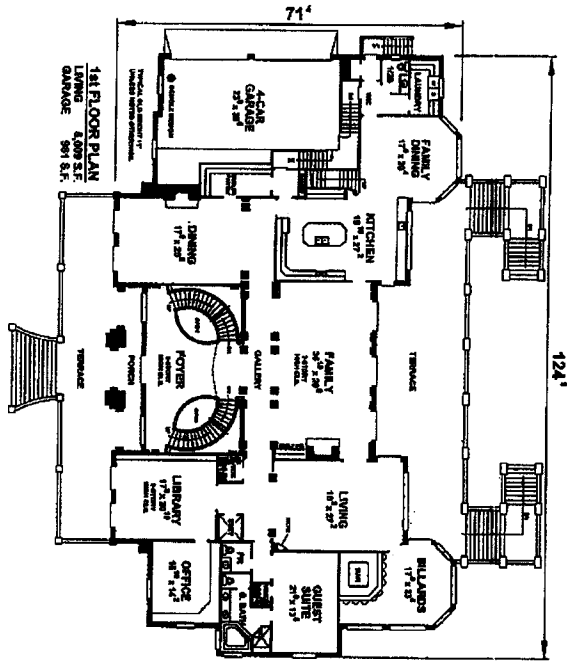
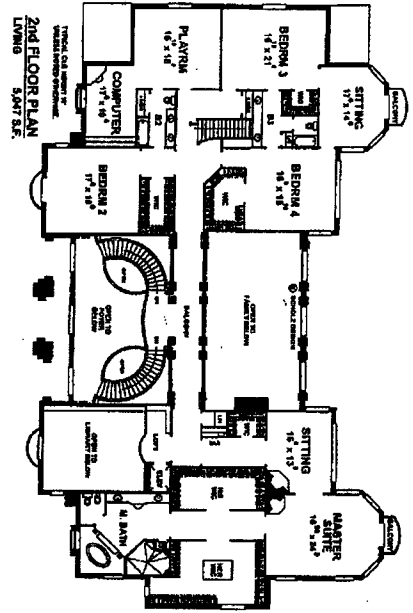
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Fax: (914) 798-5410
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Of Counsel:

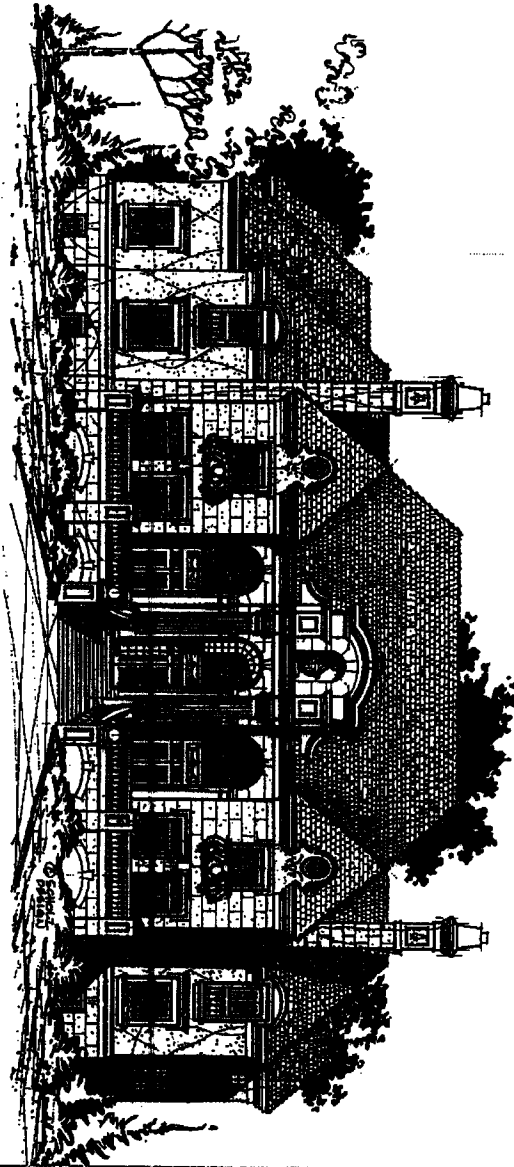
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Telephone: (419) 241-6000
Fax: (419) 247-1777
E-MAIL: jrogers@eastmansmith.com
tecourtney@eastmansmith.com

Attorneys for Plaintiff

Scholz Design



TOTAL LIVING AREA
11,856 S.F.



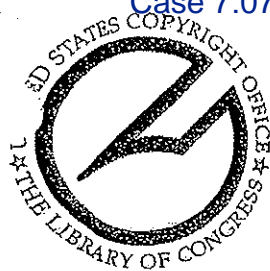
THE KIMBLETON A 111

COPYRIGHT WARNING: All Scholz Design drawings are copyrighted and protected under Title 17 of the United States Code. No part of these drawings may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without the prior written permission of Scholz Design. These drawings cannot be used in any manner to construct new, modified, or derivative drawings without the prior written permission of Scholz Design. Any unauthorized use of these drawings is strictly prohibited and will result in legal action. All drawings are subject to change without notice and are not to be used for construction purposes without the prior written permission of Scholz Design, which is subject to 2007 and current practices as presented by law.

This is an abridged version of the original copyrighted drawings. ■ © Scholz Design, Inc. All rights reserved. ■ Scholz Design, Inc., 3131 Executive Parkway, Toledo, Ohio 43606 ■ (419) 531-1601 ■ FAX (419) 531-6802 ■ www.scholzdesign.com

CERTIFICATE OF REGISTRATION

Case 7:07-cv-11045-WCC Document 1-3 Filed 12/05/2007 Page 1 of 4



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-157-956



EFFECTIVE DATE OF REGISTRATION

Sep 11 2002
Month Day Year

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

The Kimbleton A 111

PREVIOUS OR ALTERNATIVE TITLES ▼

NATURE OF THIS WORK ▼ See instructions

Architectural Technical Drawings of
Coversheet Consisting of 1 Sheets.

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

NAME OF AUTHOR ▼

a Scholz Design, Inc.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

N/A N/A

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country

OR { Citizen of USA
Domiciled in Ohio, USA

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions

- ☐ 3-Dimensional sculpture ☐ Map ☒ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NAME OF AUTHOR ▼

N/A

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

N/A N/A

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domicile
Name of Country

OR { Citizen of
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

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- ☐ 3-Dimensional sculpture ☐ Map ☒ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

Year in Which Creation of This Work Was Completed

2001

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month 09 Day 06 Year 01

USA

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Scholz Design, Inc.
3131 Executive Parkway, 2nd Floor
Toledo, OH 43606

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

SEP 11 2002

ONE DEPOSIT RECEIVED

SEP 11 2002

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FUNDS RECEIVED

MORE ON BACK ▶

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions.

DO NOT WRITE HERE

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EXAMINED BY *JSS*

FORM VA

CHECKED BY *my*
☐ CORRESPONDENCE
 Yes
FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a. ☐ This is the first published edition of a work previously registered in unpublished form.
- b. ☐ This is the first application submitted by this author as copyright claimant.
- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

N/A

Year of Registration ▼

N/A

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

N/A

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

N/A

N/A

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

James P. Barnhart, Design & Engineering
 SCHOLZ DESIGN, INC.
 3131 Executive Parkway, 2nd Floor
 Toledo, OH 43606

Area code and daytime telephone number ▶ (419) 531-1601

Fax number ▶ (419) 534-6360

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶

- ☐ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)

☒ authorized agent of Scholz Design, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

James P. Barnhart, Design & Engineering

Date ▶ 9-4-02

Handwritten signature (X) ▼

Certificate
will be
mailed in
window
envelope
to this
address:Name ▼ James P. Barnhart, Design & Engineering
SCHOLZ DESIGN, INC.

Number/Street/Apt ▼ 3131 Executive Parkway, 2nd Floor

City/State/ZIP ▼ Toledo, OH 43606

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO:

Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20559-6000

17 U.S.C. § 608(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999—100,000
 WEB REV June 1999

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/1

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Case 7:07-cv-11045-WCC Document 1-3

Filed 12/05/2007 Page 3 of 4

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UNITED STATES COPYRIGHT OFFICE

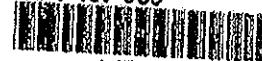


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Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

VA 1-157-955



EFFECTIVE DATE OF REGISTRATION

Sep 11 2002
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

The Kimbleton A 111

PREVIOUS OR ALTERNATIVE TITLES ▼

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Architectural Work/Building Not Yet Constructed
Consisting of 1 Sheets.

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

NAME OF AUTHOR ▼

2 Scholz Design, Inc.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

N/A N/A

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR { Citizen of USA
Domiciled in Ohio, USA

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

- ☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☒ Architectural work

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USA

Nation

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Scholz Design, Inc.
3131 Executive Parkway, 2nd Floor
Toledo, OH 43606 Phone: 419-531-1601

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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- Sign the form at line 8

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Page 1 of 2 pages

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NOTE

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See instructions before completing this space

EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE
Yes
FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

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Account Number

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N/A

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SCHOLZ DESIGN, INC.

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Toledo, OH 43606

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Fax number (419) 534-6360

Email

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check only one

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Scholz Design, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

James P. Barnhart, Design & Engineering

Date 9-4-02

Handwritten signature (X)

Certificate
will be
mailed in
window
envelope
to this
address:Name James P. Barnhart, Design & Engineering
SCHOLZ DESIGN, INC.

Number/Street/Apt.

3131 Executive Parkway, 2nd Floor

City/State/ZIP

Toledo, OH 43606

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- Sign your application in space 8

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

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2. Nonrefundable filing fee in check or money order payable to Registrar of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000As of July 1, 1999,
the filing fee for
Form VA is \$30.



